

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MICHAEL SCOTT,

Petitioner,

-v-

JOSEPH T. SMITH,

Respondent.

Case No. 07-CV-3395 (KMK)(LMS)

ORDER ADOPTING  
REPORT & RECOMMENDATION

KENNETH M. KARAS, District Judge:

Petitioner, Michael Scott ("Petitioner") was convicted under Westchester County Indictment Number 00-00408 of one count of Murder in the Second Degree/Depraved Indifference Murder under N.Y. Penal Law § 125.25(2), and one count of Reckless Endangerment in the First Degree under N.Y. Penal Law § 120.25. (Pet. ¶ 5.) On May 9, 2001, Petitioner was sentenced in the County Court of Westchester County to an indeterminate term of twenty-two years to life on the murder count and to a consecutive indeterminate term of two-and-one-third to seven years on the reckless endangerment count. (Mem. of Law and Resp't's App. 1-2.) On December 27, 2005, the Appellate Division, Second Department, affirmed Petitioner's conviction. *See People v. Scott*, 805 N.Y.S.2d 848 (App. Div. 2005). On April 19, 2006, Petitioner was denied leave to appeal to the Court of Appeals. *See People v. Scott*, 849 N.E.2d 981 (N.Y. 2006).

On April 13, 2007, Petitioner filed a petition for a Writ of Habeas Corpus ("Petition") pursuant to 28 U.S.C. § 2254. (Dkt. No. 1.) Petitioner seeks habeas relief on one ground: that Petitioner's due process rights were violated because his conviction was not supported by legally sufficient evidence. (Pet. ¶ 13.)

The case was referred to the Honorable Lisa Margaret Smith. (Dkt. No. 2.) On June 1, 2010, Magistrate Judge Smith issued a thorough Report and Recommendation (“R&R”) recommending that this Court dismiss the Petition in its entirety. (Dkt. No. 30.) Petitioner did not file a timely objection to the substance of the R&R.<sup>1</sup>

When no objections are filed, the Court reviews a R&R on a dispositive motion for clear error. *See Eisenberg v. New Eng. Motor Freight, Inc.*, 564 F. Supp. 2d 224, 226 (S.D.N.Y. 2008); *Donahue v. Global Home Loans & Fin., Inc.*, No. 05-CV-8362, 2007 WL 831816, at \*1 (S.D.N.Y. Mar. 15, 2007). The Court has reviewed the R&R and the Petition, and finding no error, clear or otherwise, adopts the R&R.

Accordingly, it is hereby

ORDERED that the Report and Recommendation, dated June 1, 2010, is ADOPTED in its entirety. It is further

ORDERED that Petitioner’s writ of habeas corpus is DISMISSED with prejudice. It is further

ORDERED that because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue, *see* 28 U.S.C. § 2253(c)(2); *Lucidore v. N.Y. State Div. of Parole*, 209 F.3d 107, 111-12 (2d Cir. 2000), and the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith. It is further

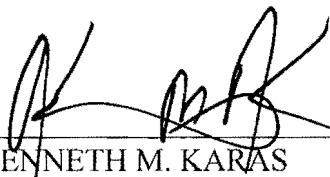
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<sup>1</sup> Petitioner submitted a timely Objection to the R&R, but the Objection only requested a review of Magistrate Judge Smith’s earlier Orders denying Petitioner’s request to be appointed counsel, without addressing the substance of the R&R. (Dkt. No. 31.) The Court issued an Order on July 27, 2010, denying without prejudice Petitioner’s request for appointment of counsel, and granting an additional three weeks to file an objection to the substance of the R&R. (Dkt. No. 32.) No further objections were filed.

ORDERED that the Clerk of the Court is respectfully directed to enter a judgment in favor of Respondent and to close this case.

SO ORDERED.

Dated: White Plains, New York  
February 7, 2012

  
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KENNETH M. KARAS  
UNITED STATES DISTRICT JUDGE

Service List

For Mailing by Clerk's Office:

Michael Scott  
DIN #01-A-2906  
Sing Sing Correctional Facility  
354 Hunter Street  
Ossining, NY 10562

Joseph M. Latino, Esq.  
Office of the District Attorney of Westchester County  
Westchester County Courthouse  
111 Dr. Martin Luther King, Jr., Blvd.  
White Plains, NY 10601

Copy To:

Honorable Lisa M. Smith  
United States Magistrate Judge